From: aetius
To: Microsoft ATR
Date: 1/23/02 8:28am
Subject: Microsoft settlement

I take issue with a specific part of the proposed settlement agreeement:

"No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction.
2. Prevent Microsoft from conditioning any license of any API, Documentation or Communications Protocol related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft product to any person or entity on the requirement that the licensee: (a) has no history of software counterfeiting or piracy or willful violation of intellectual property rights, (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph."

Section 1 here is supposed to prevent Microsoft from having to release API documentation that is seen as a security risk. The problem is that almost ALL communications protocols have security provisions as an integral part of the protocol -- thus, this section essentially gives Microsoft the green light to block full API disclosure on the grounds that it would violate the security of the protocol. Without full API disclosure, you might as well hang it up, as no competing developers will be able to implement competing products. You can't half-disclose an API; it is an all-or-nothing approach. Half-disclosure, *especially* in relation to security provisions, means only half-functioning "competing" products.

Further, this argument about "protecting security" is at most debatable. It has been repeatedly shown that Microsoft's proprietary protocols have suffered from numerous security breachs and problems. The term most often used for this in the computer security field is "security through obscurity", which is almost universally denegrated as an effective means of securing the product or protocol. There is even a competing argument that full disclosure is a far superior method of ensuring that products and protocols are reasonably secure. Regardless of where you stand on this argument, this section is an easy out that Microsoft can use to continue business as usual.

Section 2(a), (b), and (c) are a license to discriminate against open-source software providers like Red Hat, Inc and the Apache foundation. The term "willful violation of intellectual property rights" is nebulous -- what does that mean? Does it include companies that license their software under the GNU Public License, which enforces source code revelation? Microsoft certainly sees Free Software and Open Source software to be "virus-like" and opposed to intellectual property rights. Microsoft also sees Linux and Free/Open Source software as a primary competitor, so this section is allowing Microsoft free reign to operate against it's greatest threat, and continue to exclude Open Source and Free Software developers from any sort of API disclosure or assistance with inter-operation. It is extremely doubtful that Microsoft will see Free Software or Open Source software as having a "reasonable business need" for the API, since most developers in the Free Software/Open Source communities don't have businesses.

Links to Microsoft's view of Linux and the Free Software/Open Source community:

http://www.theregister.co.uk/content/1/12266.html
http://content.techweb.com/wire/story/TWB20010110S0006
http://www.suntimes.com/output/tech/cst-fin-micro01.html (use Google cache)

The remedy to this portion of the agreement is simply to enjoin Microsoft to release the API documentation to anyone who asks. Only that will allow the thousands of developers world-wide who participate in Open Source and Free Software development to make their products inter-operable with Microsoft products. If this is not remedied, a huge portion of the competitive market is tacitly eliminated by this agreement.

Section 2(d) is ill-defined, and could be abused. The entire agreement seems to be designed around trying to make Microsoft inter-operate with other vendors and not step on them or introduce default competing products/services, or at least that is the way that it sounds. Section 2(d) reduces the effectiveness of all the other provisions because it allows Microsoft to control (through "compatibility testing") what software can and cannot be run on Microsoft operating systems. The

argument was probably that this would only cause a delay in the release of the software if it was found to be "incompatible"; however, such "delays" could easily turn into delays that put companies under, or the cost could be so high that companies couldn't afford to pay, and of course private individuals would be completely unable to pay (since they can't even produce an "authentic and viable business need" to run the software, let alone certify it.

Section 2(d) needs to be redefined, especially with relation to competing Free Software and Open Source products, and with relation to Microsoft approval of what software runs on their OS. The third-party stipulation is worthless (and could even be counter-productive) since it must be Microsoft approved, which would engender an environment where the third-party certfication authority would bow to Microsoft's demands -- they either do what Microsoft wants, or they lose the business, and certification is delayed (along with competing products) while Microsoft finds a certification partner that WILL do what they want. There is no stipulation on what constitutes "approved" by Microsoft.

In summary, this agreement does not achieve what it seeks to accomplish. It allows Microsoft to force commercial ISV's to get their software approved before it can run on Windows, and it blocks the disclosure necessary for Microsoft's primary competition, Free and Open Source software, to continue to compete against and inter-operate with Microsoft products. Please do not allow this agreement to be settled; it would make the entire anti-trust suit a depressing waste of time and money.

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